

# CARR & FERRELL LLP

## A T T O R N E Y S A T L A W

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### FACSIMILE COVER SHEET

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Date:	December 19, 2003	
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Total pages:	10	(including cover sheet)
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SIR:

Attached please find an advance courtesy copy of a "Supplement to Renewed Petitions Under 37 CFR § 1.47(a) and 1.137(b)" as it pertains to U.S. patent application number 09/701,797. A formal copy was sent by Express Mail 19 December 2003 to the Office of PCT Legal Administration. Applicants respectfully request consideration of this supplemental information before any decision is rendered on the "Renewed Petitions Under 37 CFR 1.47(a) and 1.137(b)" mailed 25 September 2003.

I hereby certify that this correspondence is being facsimile transmitted to the U.S.P.T.O. at 703.308.6459 on 19 December 2003.

By:



V. Randall Gard (R.N. 33,886)

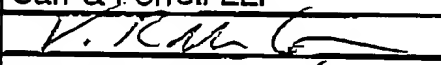
PTO/SB/21 (05-03)


Approved for use through 04/30/2003. OMB 0651-0031

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<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)	Application Number	09/701,797	
	Filing Date	December 1, 2000	
	First Named Inventor	Hersh	
	Art Unit	Unknown	
	Examiner Name	Unknown	
Total Number of Pages In This Submission	9	Attorney Docket Number	PA1675US

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition (Supplement) <input type="checkbox"/> Petition to Convert to a Provisional Application <input checked="" type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): (1) Declaration and Power of Attorney by Legal Representative; (2) Confirmation Postcard
Remarks Total page number does not include postcard.		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm or Individual name	Carr & Ferrell LLP	
Signature	 Reg. No. 33,886	
Date	December 19, 2003	

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Typed or printed name	V. Randall Gard		
Signature		Date	December 19, 2003

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE


APPLICANTS: Clifford L. Hersh et al.  
SERIAL NO.: 09/701,797  
FILING DATE: December 1, 2000  
TITLE: Method for Increased Concurrency in a Computer System  
EXAMINER: Unknown  
ART UNIT: Unknown  
ATTY. DKT. NO.: PA1675US

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## Certificate of Express Mailing Under 37 C.F.R. § 1.10

I hereby certify the correspondence attached hereto is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Express Mail Number EV 400 681 959 under 37 C.F.R. § 1.10 on 19 December 2003 and is addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, VA 22313-1450.

By:

  
V. Randall Gard, Reg. No. 33,886

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P.O. Box 1450  
Alexandria, VA 22313-1450

Supplement to  
Renewed Petitions Under 37 CFR 1.47(a) and 1.137(b)

SIR:

## Background

The present paper is a supplement to the renewed petitions dated 25 September 2003. Those petitions related to a series of petitions for revival of an abandoned patent application pursuant to 37 CFR 1.137(b) for unintentional abandonment and 37 CFR 1.47(a) as to the declaration requirements where there exists an uncooperative or unavailable inventor.

EV400681959US

The co-inventor for this application, Herbert Sullivan, is deceased. Mr. Sullivan's legal representative and heir, Mrs. Joan Todd, is also deceased. Applicants have been directed, pursuant to the *Decision on Petition* dated 19 February 2003, to "seek Mr. Sullivan's current legal representative." Noting Joan Todd to be the only heir to the Sullivan estate, the *Decision* dated 19 February 2003 further directed the Applicants to "seek the heirs to Mrs. Todd's estate."

In the renewed petitions dated 25 September 2003, Applicants' representative noted it had obtained the contact information for the attorney of record for the estate of Mrs. Joan Todd. *September 25 Petition*, 2. This information was provided by the Surrogate's Court of the County of New York—the court of competent jurisdiction for the probate of the estate of Mrs. Joan Todd. *Id.*

Applicants' representative subsequently contacted Mr. Ralph M. Engel, attorney for the estate of Mrs. Joan Todd and also for Mr. Dominic Gaeta, the executor and beneficiary of the Joan Todd estate. *Id.* Mr. Engel confirmed his representation of the estate and its executor, Mr. Gaeta. *Id.*

Per Mr. Engel's request, Applicants' representative delivered a letter detailing the assistance required from Mr. Gaeta in his position as the executor and beneficiary of the Joan Todd estate and the declaration requirement for the present application. *Id.* at 2-3. Applicants' representative also provided a copy of the application and a declaration and power of attorney. *Id.* at 3. At the time the previous petition was filed on 25 September 2003, neither Mr. Gaeta nor Mr. Engel had replied as to whether they would be willing to execute the declaration for this application.

The oath and declaration of co-inventor Clifford Hersh has previously been submitted and recognized as being proper and without defect by the Patent Office. *Id.*

#### **New Facts as They Relate to the Renewed Petitions Filed 25 September 2003**

Since the filing of the renewed petitions dated 25 September 2003, Mr. Dominic Gaeta—the executor and beneficiary of the Joan Todd estate—has executed a declaration under penalty of perjury that includes, *inter alia*:

- (1) a declaration that he is "the legal representative of Ms. Joan Todd, deceased";
- (2) the citizenship of Mr. Herbert Sullivan—the United States;
- (3) the requisite declaration under 37 CFR § 1.497(a)(4) stating that Mr. Gaeta believes Mr. Sullivan to be "an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought" in the present application;

- (4) the requisite declaration under 37 CFR § 1.63 as to having “reviewed and understand the contents” of the specification of the present application and further acknowledging “the duty to disclose information which is material to patentability” as defined in 37 CFR § 1.56.

**Previously Submitted Renewed Petition Under 37 CFR 1.47(a)**

The petition under 37 CFR § 1.47(a) is now moot as the legal representative of Mr. Sullivan—via the estate of Ms. Todd—has executed the requisite declaration along with co-inventor Clifford Hersh.

**Previously Submitted Renewed Petition Under 37 CFR 1.137(b)**

A proper petition under 37 CFR 1.137(b) requires:

- (1) the required reply;
- (2) the petition fee required by law;
- (3) a statement that the entire delay in filing the required reply was unintentional; and
- (4) any terminal disclaimer pursuant to 37 CFR 137(c) (where required).

Applicants previously satisfied the latter three requirements, as confirmed by the Patent Office, leaving only the submission of the required reply to revive the application. See 30 May 2002 *Decision on Petition Under 37 CFR 1.137(b)* (the “applicant has satisfied Items (2), (3) and (4)”).

Applicants contend the enclosed *Declaration and Power of Attorney for Patent Application* executed by Mr. Dominic Gaeta, the executor and beneficiary of the Joan Todd estate, in conjunction with the previously submitted and accepted declaration of Clifford Hersh hereby satisfies the requirement as to a proper reply.

### CONCLUSION

In view of the foregoing, a decision in favor of a revival of the present application is respectfully requested.

Respectfully submitted,  
Clifford L. Hersh et al.

Date: 19 December 2003

By: 

V. Randall Gard, Reg. No. 33,886  
Carr & Ferrell LLP  
2200 Geng Road  
Palo Alto, CA 94303  
Phone (650) 812-3400  
Fax (650) 812-3444

**DECLARATION AND POWER OF ATTORNEY FOR PATENT APPLICATION**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**Method for Increased Concurrency in a Computer System**

the specification of which was filed in the U.S. Patent Office on **December 1, 2000** and assigned application number **09/701,797**.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under Title 35, United States Code §119(a)-(d) or (f) or §365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed:

**No Foreign Priority Benefit Claimed**

I hereby claim the benefit under Title 35, United States Code §119(e) of any United States provisional application(s) listed below.

**No Provisional Priority Benefit Claimed**

I hereby claim the benefit under Title 35, United States Code §120 of any United States application(s), or §365(c) of any PCT International application designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code §112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56 which became available between the filing date of the prior application and the national or PCT International filing date of this application.

**PCT/US99/12433**

*Application Number*

**June 3, 1999**

*International Filing Date*

**Abandoned**

*Present Status of Application*

**POWER OF ATTORNEY:** I hereby appoint the attorneys and agents associated with the Customer Number 22830 to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

**SEND ALL CORRESPONDENCE TO:**

CARR & FERRELL LLP

2200 Geng Road

Palo Alto, CA 94303

TEL: (650) 812-3400

FAX: (650) 812-3444

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first inventor: Clifford L. Hersh Citizenship: USA

Inventor's signature: \_\_\_\_\_ Dated: \_\_\_\_\_  
(Permanent ink only) (Date of Signature)

Mailing Address: 801 Mahler Road, Suite G, Burlingame, CA 94010 CA

Residence Address: 2361 Piedmont Avenue, Berkeley, California 94704

Full name of second inventor: Herbert W. Sullivan Citizenship: USA

Inventor's signature: Executed by Legal Representative Dated: \_\_\_\_\_

Mailing Address: 205 West End Avenue, New York, New York 10023 (Last known)

Residence Address: 205 West End Avenue, New York, New York 10023 (Last known) NY

I, Dominic Gaeta, as the legal representative of Ms. Joan Todd, deceased, who initially made application for this patent application as the sole heir of the co-inventor, Herbert Sullivan, upon and information and belief, do declare the foregoing to be true and correct on behalf of Ms. Joan Todd on behalf of Mr. Herbert Sullivan.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States

Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of Legal Representative:

Dominic Gaeta

Citizenship:

USA

Representative's signature:

Dominic Gaeta  
(Permanent ink only)

Dated:

12-1-03

(Date of Signature)

Mailing Address:

P.O. Box 502 Ridgewood NJ 07451  
Where the legal representative normally receives mail

Residence Address:

533 Lotus Rd. Ridgewood NJ 07450  
If the legal representative lives at a location different than his mailing address

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# CHANGE OF CORRESPONDENCE ADDRESS Application

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Alexandria, VA 22313-1450.

Application Number	09/701,797
Filing Date	December 1, 2000
First Named Inventor	Hersch
Art Unit	Unknown
Examiner Name	Unknown
Attorney Docket Number	PA1675US

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I am the:

- ☐ Applicant/Inventor
- ☐ Assignee of record of the entire interest.  
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).
- ☒ Attorney or Agent of record. Registration Number 33,886
- ☐ Registered practitioner named in the application transmittal letter in an application without an executed oath or declaration. See 37 CFR 1.33(a)(1). Registration Number \_\_\_\_\_

Typed or Printed  
Name

V. Randall Gard, Reg. No. 33,886

Signature

Date December 19, 2003

Telephone 850-812-3400

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ \*Total of 1 forms are submitted.

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